

REMARKS

The preceding amendments to the claims are being made in response to the Examiner's Office Action in the above-identified application mailed on February 25, 2004.

This paper is being accompanied by a request for a two-month extension of time and the appropriate (small entity) fee for such extension.

(A) REJECTION OF CLAIMS 1-11, 14 and 17 UNDER 35 USC 103(a)

Claims 1-11, 14 and 17 have been rejected under 35 USC 103(a) as being unpatentable over Stanley (US 3,774,929A) and further in view of Huffman et al. (US 3,162,462A).

With respect to claims 1, 5 and 7, the Examiner indicated that the Stanley patent discloses a multi-level personal utility cart 10 including a frame 16 with handle 34 having a rearward upper portion, side portions and a forward lower portion, a first lower basket assembly 12, 14 with open top, a second upper basket assembly 100 with open top, wherein the lower basket assembly is pivotable relative to the frame and can be collapsed independently onto the frame to form a substantially planar structure as shown in Figures 1-7. The Examiner relied on Huffman et al for a teaching of a cart including a pair of pivoting baskets, where the baskets are pivotally secured to a frame as shown in Figures 1 and 2 of Huffman et al., and concluded that it would have been obvious to one of ordinary skill in the art to "have pivotally attached the upper basket of Stanley, as taught by Huffman et al., in order to collapse the cart for easy storage.

With respect to claims 2-4, 6, 8-11 and 17, Stanley is alleged to disclose swivel wheels 38 on the lower handle portion, U-shaped segments forming the handle, a vertical support member 12 with wheels 20, front, side and back panels on each basket assembly, and back panels comprising a planar grillwork backbone of wires 24 on the vertical members (as shown in Figures 1-7).

With respect to claim 14, Stanley is alleged to show clips 32 for securing the lower basket (Figure 7) and the Examiner relied on Huffman et al. for a teaching that to

apply to clips to secure the lower basket of Stanley to the upper basket would have been obvious.

Claim 15 was rejected under 35 USC 103(a) as being unpatentable over Stanley and Huffman et al. as applied to claim 1, and further in view of Luff (US 3,310,317A), the Luff patent teaching parallel hook members called out in claim 15.

Claim 16 was rejected under 35 USC 103(a) as being unpatentable over Stanley and Elders as applied to claim 1, and further in view of Sawyer et al. (US 5,901,482A) noting that Sawyer et al. discloses tag holders 22, 24 for attachment to the front panel of a shopping cart 10.

Applicants respectfully traverse these rejections and request reconsideration and allowance of the rejected claims for the following reasons.

The Stanley patent on which the rejections are principally based discloses a personal utility cart having a frame 16 which forms part of a collapsible lower basket assembly 12, 14. A collapsible upper basket assembly 100 is supported atop the lower collapsible basket assembly. The upper basket assembly 100 can be collapsed and folded into a planar structure which, as shown in Figure 4 of the Stanley patent, is positioned to overlie the lower basket assembly in such a manner that a forward portion is supported on the uppermost member of the forward panel of the cart and a rearward portion of the upper basket assembly 100 is engaged by a hooked portion 102 with the rear panel of the cart.

As amended, claim 1 now recites a frame including a handle, a first basket assembly having a portion pivotably secured to said frame, a second basket assembly disposed atop the first basket assembly and having a portion pivotably secured to said frame, ..., **said first and second basket assemblies being simultaneously pivotable on said frame toward said handle upper portion** so that said first and second basket assemblies can be collapsed against a portion of said frame into a compact and substantially planar structure, **and access to said first basket assembly, when both baskets are opened, being obtained only by collapse of said second basket assembly.**

In the Stanley patent, as noted above, the upper basket assembly 100 can be folded into a planar structure and hooked onto the rear panel of the Stanley cart by hook member 102. When it is desired to collapse the Stanley cart, the upper basket

assembly 100 is first collapsed to form a flat horizontal structure, as shown in Figure 4 of Stanley, and the hook member 102, which is a part of the upper basket assembly, is then removed from the cart's rear panel 50 while the flattened upper basket assembly 100 is then hung from the rear panel of the cart by hooks 150 formed in and extending from the cart rear panel

The upper basket assembly 100 of Stanley is not pivotably secured to the frame but rather hooked to the rear panel of the frame, and this is not for enabling pivoting movement of the basket assembly 100 relative to the cart rear panel, but rather to provide a means of support for the rear of the upper basket assembly to counteract the weight of the basket assembly 100, especially as that basket assembly gets filled with merchandise.

Further, when collapsing the cart of Stanley, both of the upper and lower basket assemblies of that patent do not pivot on the frame toward the handle upper portion, as required by the last paragraph of claim 1 – rather, only the lower basket assembly pivots upwardly toward the handle upper portion. The upper basket assembly must be removed from the handle, then collapsed, and then hung from the handle in order to permit the lower basket assembly to then be folded into a compact and substantially planar structure.

The Examiner says Huffman et al. teaches a pair of pivoting baskets 19, 20, and asserts that it would have been obvious to pivotally attach the upper basket of the Stanley cart.

Finally, and just as importantly (applicants wish to make this very clear as the Examiner has apparently overlooked or ignored this claim requirement), the first and second basket assemblies are **simultaneously pivotable on said frame toward the handle upper portion** in order to effect collapse of the cart.

With regard to the Examiner's rejection of claim 15, the Stanley patent fails to disclose or teach simultaneous pivoting of the upper and lower basket assemblies toward the handle upper portion in order to effect collapse of the cart. In this patent, the upper basket assembly must be collapsed before the lower basket assembly can be collapsed.

The Examiner indicated that neither of Stanley or Huffman et al. disclose a parallel hook member on the carts for hanging the carts when not in use, but urged that

it would have been obvious to one of ordinary skill in the art to provide such hook members on the carts in view of Luff.

Applicants have scoured the Luff patent looking for the parallel hook members on a portion of the frame for suspending the cart when the cart is collapsed.

However, no such structure was found. Instead, the patent shows a hook 44 which engages the handle 13 to hold the cart 10 in a collapsed position (note column 2, lines 50-53).

Withdrawal of the rejection of claim 15 under 35 USC 103(a) as being unpatentable over Stanley and Huffman et al. as applied to claim 1 and further in view of Luff (US 3,310,317 A), and allowance of claim 15, is therefore respectfully solicited.

Claim 16 was rejected under 35 USC 103(a) as being unpatentable over Stanley and Huffman et al. as applied to claim 1, and further in view of Sawyer et al. (US 5,901,482A) noting that Sawyer et al. discloses tag holders 22, 24 for attachment to the front panel of a shopping cart 10.

The Examiner stated that Sawyer et al. was relied upon for a teaching of attaching tag holders to the front panel of a shopping cart, and decided it would be obvious in view of Sawyer et al. to place tag holders on the cart in order to place advertising tags on the cart.

Applicants do not believe claim 16 to be unpatentable as claim 16 must be read as an additional feature, not as a stand-alone feature. Claim 16 therefore must be read as including the recitations of claim 1 from which it is dependent, and since the basic combination of references relied upon to support the rejection of claim 1 has been shown (above) to be fatally defective, the addition of the Sawyer et al. teachings will not cure the deficiencies of the combination of Stanley and Huffman et al. teachings.

THE DOUBLE PATENTING REJECTION

Claims 1-7 and 10-17 were provisionally rejected under 35 USC 101 as claiming the same invention as that of claims 1-7 and 10-17 in copending US application No. 10/055,819.

Applicants respectfully urge the withdrawal of this rejection for the following reasons.

First, a double patenting rejection based on 35 USC 101 requires that the invention claimed in this application be identical to the invention claimed in the '819 application. This is NOT the case inasmuch as the invention claimed in this application is distinguishable from the invention claimed in the '819 application.

The invention in the present application, as claimed, has the property that access to the contents of the lower basket assembly, when both the upper and lower basket assemblies are opened, is only by closure/collapse of the upper basket assembly.

In contrast, the invention in the '819 application, as claimed, has the property that access to the contents of the lower basket assembly, when both the upper and lower basket assemblies are opened, is by a rear door on the lower basket which pivots open.

Thus, as the claims in this application are now written, the invention claimed in this application is NOT identical to the invention claimed in the '819 application.

Further, applicants wish to point out that, not only do the two applications share one inventor, but the same assignee also owns this application and the '819 application. Applicants believe that under such circumstances, a double patenting rejection under 35 USC 101 is improper.

If necessary, applicants can present evidence of such assignment and further, if deemed necessary, applicants can present a terminal disclaimer, whenever the claims in the '819 application issue.


Further, applicants noted that, in the '819 application, the Examiner indicated that claim 12 (drawn to slide members on the handle) and claim 13 (drawn to locking protruberances...) enjoyed allowable status.

The same claim recitations have been presented in this application, in claims 12 and 13. Applicants are confused about why the same claimed subject matter (i.e., slide members and locking protruberances), which is present in this application, was not accorded allowable status?

CONCLUSION

Entry of the foregoing amendments to this application is respectfully solicited, and a holding by the Examiner that the elected claims now remaining in the application are patentable over the prior art of record is respectfully solicited. No new matter has been introduced by the foregoing amendments. If the Examiner has any questions or requires further information or explanation, he is invited to contact the undersigned at the telephone numbers provided below.

Respectfully submitted on behalf of applicants,


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